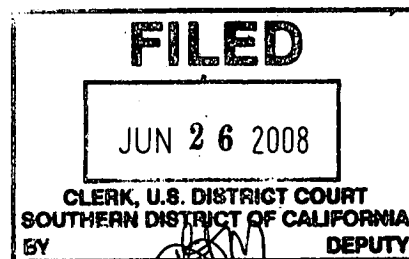


1 KAREN P. HEWITT  
United States Attorney  
2 REBECCA S. KANTER  
Assistant United States Attorney  
3 California State Bar No. 230257  
United States Attorney's Office  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101  
Telephone: (619) 557-6747  
6  
7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR1559-H  
11 )  
12 Plaintiff, )  
13 v. ) **STIPULATION OF FACT AND JOINT**  
14 JULIO CESAR NUNEZ-GOMEZ, ) **MOTION FOR RELEASE OF**  
15 Defendant. ) **MATERIAL WITNESS(ES) AND**  
 ) **ORDER THEREON**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Rebecca  
18 S. Kanter, Assistant United States Attorney, and defendant JULIO CESAR NUNEZ-GOMEZ, by  
19 and through and with the advice and consent of defense counsel, Candis Mitchell, Federal Defenders  
20 of San Diego, Inc., that:

21 1. Defendant agrees to execute this stipulation on or before the first motion hearing date  
22 and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to count two  
24 of the indictment charging defendant with a non-mandatory minimum count of Bringing in Aliens  
25 Without Presentation, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii).

26 //

27 //

28 //

1           2.     Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.     Defendant agrees to plead guilty to the charge pursuant to the plea agreement before  
5 the material witness depositions are taken.

6           4.     The material witnesses, Miguel Angel Alaniz-Morales, Maria Esther Mata-Martinez,  
7 and Cristobal Salazar-Flores, in this case:

8               a.     Are aliens with no lawful right to enter or remain in the United States;

9               b.     Entered or attempted to enter the United States illegally on or about  
10 May 2, 2008;

11              c.     Were found in rural terrain near the international border with Mexico and  
12 were being guided by defendant, and defendant knew of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14              d.     Were paying and having others pay on their behalf \$2,500 to be brought into  
15 the United States illegally and/or transported illegally to their destination therein; and,

16              e.     May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5.     After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22               a.     The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24               b.     The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
15 United States Attorney

16 Dated: 6/19/08

Rebecca Kanter  
17 REBECCA S. KANTER  
Assistant United States Attorney

18 Dated: 18 June 2008

Candis Mitchell  
19 CANDIS MITCHELL  
Defense Counsel for NUNEZ-GOMEZ

20 Dated: 18 June 2008

Julio Cesar Nunez-Gomez  
21 JULIO CESAR NUNEZ-GOMEZ  
Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 4/24/08

  
United States Magistrate Judge